

1 MOT

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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 **INCORP SERVICES, INC.**, a Nevada  
corporation,

14 CASE NO. 2:09-cv-01300-RCJ-GWF

15 Plaintiff,

16 **INCORP SERVICES, INC.’S MOTION  
TO DISMISS PURSUANT TO FED. R.  
CIV. P. 12(B)(6)**

17 vs.  
18 **NEVADA CORPORATE SERVICES, INC.**, a  
Nevada corporation, and **DOES 1-10**, inclusive,

19 Defendant.

20 **NEVADA CORPORATE SERVICES, INC.**, a  
Nevada corporation,

21 Counter-Plaintiff,

22 vs.

23 **INCORP SERVICES, INC.**, a Nevada  
corporation,

24 Counter-Defendant.

25 Pursuant to Federal Rule of Civil Procedure ("FRCP") 12(B)(6), Plaintiff/Counter-  
26 Defendant, Incorp Services, Inc. ("Incorp") moves the Court to dismiss the Counterclaim (Doc  
27 #9) of Defendant/Counter-Plaintiff, Nevada Corporate Services ("NCS"), on the ground that  
28

1 NCS has failed to allege any legal or factual basis to support its Counterclaim for abuse of  
 2 process, particularly where NCS has not identified any court process that was supposedly abused  
 3 by Incorp.

4 This Motion is based on Incorp's Memorandum of Points and Authorities set forth below,  
 5 all pleadings on file in this case, and such further evidence and arguments that may be presented  
 6 prior to or at the hearing on this Motion.

7 DATED this 8<sup>th</sup> day of September, 2009.

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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 In an attempt to distract the Court from its own misconduct, NCS has brought a  
 22 counterclaim against Incorp. Unfortunately for NCS, the abuse of process claim is so legally  
 23 deficient and so factually unsupported that it exacerbates NCS's misconduct by vexatiously  
 24 multiplying this litigation.

25 First, NCS's abuse of process claim fails because the sole basis for the claim is that  
 26 Incorp filed the complaint in this lawsuit. As Nevada law has established, an abuse of process  
 27 claim cannot be based on the filing of a complaint. Second, even if NCS could identify some  
 28 other process supposedly abused by NCS, it has alleged absolutely no facts to support its claims.

29 Thus, the Court must dismiss NCS's counterclaim.

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II.

## **BACKGROUND**

3 NCS is a competitor of Incorp, offering similar company formation and registration  
4 services, including registered agent services. (See Complaint, Doc #1, at ¶¶ 11, 14). On or  
5 around May 29, 2009, NCS drafted and sent defamatory letters to Incorp’s clients, which falsely  
6 stated that Incorp “may be discontinuing” its registered agent services, leaving its clients  
7 “vulnerable and at risk.” (Id. at ¶¶ 3, 17). The letter included several other false insinuations  
8 that Incorp’s clients could be victims of Incorp’s “lack of service and professionalism.” (Id. at  
9 ¶20). NCS’s defamatory statements have caused irreparable harm to Incorp. (Id. at ¶¶ 7, 10, 11,  
10 12).

In response to NCS’s misconduct, Incorp filed a lawsuit against NCS on July 17, 2009. NCS’s answer was due on August 11, 2009. NCS failed to file a timely answer, and Incorp obtained entry of default. After entry of default—and without seeking leave to lift the default—NCS filed an answer and a counter-claim for abuse of process. However, NCS’s counter-claim is nearly incomprehensible and provides no factual or legal support.

III.

## **LEGAL ARGUMENT**

## 18 | A. Federal Pleading Standard.

19 “[F]or a complaint to survive a motion to dismiss, the non-conclusory factual content,  
20 and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the  
21 plaintiff to relief.” *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).  
22 NCS’s counterclaim fails this liberal standard.

**23 B. NCS has failed to state a claim for abuse of process.**

24 NCS's claim for abuse of process is legally baseless and factually unsubstantiated. To  
25 state a claim for abuse of process under Nevada law, NCS must allege: 1) that Incorp had an  
26 ulterior motive other than resolving a legal dispute, and 2) that Incorp willfully misused legal  
27 processes, not proper in the regular conduct of this proceeding. *Rashidi v. Albright*, 818 F. Supp.  
28 1354, 1358-9 (D. Nev. 1993); *Raphaelson v. Ashtonwood Stud Associates, L.P.*, No. 08-1070,

1 2009 WL 2382765, \*3 (D. Nev. July 31, 2009).

2 Significantly, “Nevada courts have held that the filing of a complaint alone cannot  
 3 constitute the willful act necessary for the tort to lie.” *Laxalt v. McClatchy*, 622 F. Supp. 737,  
 4 752 (D. Nev.1985); *see also Raphaelson*, 2009 WL 2382765 at \*3; *Bricklayers & Allied*  
 5 *Craftsmen, Local Union No. 3 v. Masonry and Tile Contractors Association of Southern Nevada*,  
 6 No. 81-726, 1990 WL 270784, \*9 (D. Nev. July 2, 1990).

7 While NCS’s counter-claim is largely incoherent, the sole basis for its abuse of process  
 8 claim is that Incorp filed a complaint, which allegedly contained “false and fraudulent  
 9 allegations” about NCS. (See Counterclaim at ¶10). NCS provides no other basis for its abuse  
 10 of process claim. Nor does NCS cite to any other court process Incorp has improperly used  
 11 (given that the only action that Incorp had taken in this proceeding at the time of the  
 12 counterclaim was to file the complaint, NCS’s failure in this respect is particularly glaring).

13 Moreover, NCS’s has failed to allege any facts that could support its abuse of process  
 14 claim. NCS’s counter-complaint does not identify a single court process that was abused or the  
 15 supposed nature of that abuse. Nor does NCS provide any believable explanation or motive for  
 16 Incorp’s alleged abuse of process.

17 In fact, the only thing that’s clear from NCS’s counter-claim is that it was brought to  
 18 annoy, harass, and impose unnecessary costs on Incorp. Because NCS’s abuse of process claim  
 19 is legally baseless and factually unsubstantiated, the Court should dismiss it under Federal Rule  
 20 of Civil Procedure 12(b)(6).

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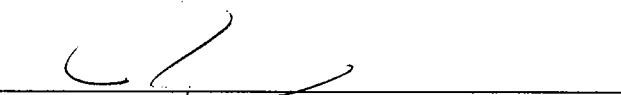
1 IV.  
2

3 **CONCLUSION**  
4

5 For all of the reasons set forth above, the Court should dismiss NCS's counterclaim under  
6 Federal Rule of Civil Procedure 12(b)(6).  
7

8 DATED this 8 day of September, 2009.  
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## **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of Gordon Silver, hereby certifies that on the 8<sup>th</sup> day of  
3 September, 2009, she served a copy of the Motion, by facsimile, and by placing said copy in an  
4 envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed  
5 to

6 R. Christopher Reade, Esq.  
Reade & Associates  
7 4560 S. Decatur Blvd., Suite 201  
Las Vegas, NV 89103  
8 Fax: (702) 794-4421

A handwritten signature in black ink, appearing to read "Anna Dang".

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Anna Dang, an employee of  
GORDON SILVER

**Anna Dang, an employee of  
GORDON SILVER**